In the High Court of Judicature at Madras

Dated:07.03.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No.99 of 2006

D. Rajakumari .. Petitioner

vs.

1. The District Magistrate
   and District Collector
   Erode.

2. State of Tamil Nadu rep. by
   Secretary to Government
   Co.operation, Food, Consumer
   Protection Department
   Fort St. George,
   Madras 9.

3. Union of India rep. by
   Secretary to Government
   Food and Consumer Protection
   Department, 305-A Sashtry Bhavan
   New Delhi 1. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus calling for the entire records connected with the order in C.NO. 1/PBMMSEC/ACT/06(M3) dated 13.01.2006 on the file of the 1st Respondent and quash the same and produce the detenue before this Hon'ble Court set at liberty the detenue Durairaj, S/o. Samudrapandiyan now detained in Central Prison, Coimbatoreas stated therein.

For petitioner : Mr. B. Kumar, Sr. counsel
Mr. C. Prakasam

For respondents 1 and 2 : Mr. Abudukumar Rajarathinam
Government Advocate (Crl.side)

Mr. P. Kumaresan, ACGSC
for R.3.
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ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner by name Rajakumari, challenges the impugned detention order of the first respondent dated 13.01.2006, detaining the detenu Durairaj, her husband as Black Marketer under Section 3(2)(a) read with 3 (1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980), in this petition.

2. Heard Mr. B. Kumar, learned senior counsel for the petitioner, Mr. Abudukumar Rajarathinam, learned Government advocate for respondents 1 and 2 and Mr. P. Kumaresan, learned Additional Central Government standing counsel for the third respondent.

3. At the foremost, learned senior counsel appearing for the petitioner submitted that though the detaining authority passed the impugned detention order after taking note of the remand of the detenu in Crime No.8 of 2006, there is no such remand order. He further contended that in spite of specific representation dated 21.01.2006 by the petitioner, wife of the detenu, asking for a copy of the remand order passed by the Criminal Court, the same was not furnished, but a reply was sent on 06.02.2006, rejecting her request.

4. In paragraph 2 of the grounds of detention there is a specific reference to Erode Civil Supplies Criminal Investigation Department Crime No.8/2006 under Section 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act 1995, in which the detenu by name Durairaj, Rangasamy, lorry drivers Senthilkumar and another Senthilkumar were arrested. The detaining authority taking note of remand warrant of the Judicial Magistrate No.II, Gobichettipalayam, which is available at page 29 of the paper book and after satisfying himself that the detenu is in remand, passed the order of detention. A perusal of the said remand warrant shows that it refers the name of the detenu, viz., Durairaj and offences for which he was arrested. There is no reference to Crime No.8 of 2006. In such a circumstance, it is not clear, how the detaining authority satisfied himself regarding his remand on the date of passing of the detention order.

5. The learned Government Advocate by drawing our attention to the arrest report, remand requisition by the

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sponsoring authority and affidavit of the sponsoring authority, wherein Crime No.8 of 2006 has been referred to, contended that those materials were taken note of by the detaining authority and merely because there is no reference to crime number in remand warrant, the ultimate order passed by the detaining authority cannot be faulted with.

6. It is true that in the arrest report, remand requisition and in the affidavit of the sponsoring authority, Crime No.8 of 2006 has been mentioned, however, in the absence of remand order, the detaining authority heavily relied on the remand warrant available at page 29, which admittedly does not contain the crime number. In this regard it is relevant to note that even though a representation was made on 21.01.2006, with a specific complaint that no remand order copy was supplied, in the reply dated 06.02.2006, the Secretary, Cooperation, Food and Consumer Protection Department, mechanically passed a non speaking order, rejecting her request. A perusal of the said reply shows that the authority concerned has not bestowed to the request made in the representation, when a specific complaint is made that no copy of order passed by the Magistrate remanding the detenu was supplied. It is but proper for the authority to verify whether any such order was passed, if so, copy of the same has to be supplied as requested. We are satisfied that the Secretary who sent the reply has not applied his mind with reference to the request made in the representation dated 21.01.2006. It is also brought to our notice by the learned senior counsel for the petitioner that one Rangasamy, co.accused who was also arrested and detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, on the same day along with the detenu was let off by the Advisory Board. Though the said suggestion of the Advisory Board is not relevant in considering the case of the detenu, however, on going through the confession statement of the detenu Durairaj and other person Rangasamy as well as the allegations made against them, it is not clear the details of additional material that were placed in so far as the detenu Durairaj is concerned.

Taking note of all these aspects and in the light of the infirmities referred to above, we are of the view that the detenu is prejudiced in rejecting his wife's representation dated 21.01.2006. On this ground we are satisfied that the impugned detention order is vitiated; accordingly, this petition is allowed. The order of detention impugned in the petition is set aside and the

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detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Magistrate
   and District Collector
   Erode.

2. Secretary to Government
   State of Tamil Nadu
   Co.operation, Food, Consumer
   Protection Department
   Fort St. George,
   Madras 9.

3. Secretary to Government
   Union of India
   Food and Consumer Protection
   Department, 305-A Sashtry Bhavan
   New Delhi 1.

4. The Public Prosecutor, High Court, Madras

5. The Superintendent, Central Prison, Coimbatore

+ one cc to Mr. C. Prakasam, Advocate sr no. 11245

VC(CO)
NM(16.03.2006)

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Order in
H.C.P.No.99 of 2006

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